



1652

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Group Art Unit: 1652

Eriko Takano et al.

Special Programs Examiner:  
William Dixon

Application No. 10/017,471

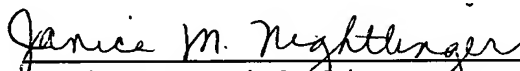
Filed: October 23, 2001

For: Antibiotic Production

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Suite 2400  
1601 Market Street  
Philadelphia, PA 19103  
(215) 563-4100 (telephone)  
(215) 563-4044 (facsimile)  
Our File No. 0380-P02329US1  
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**Certificate of Mailing Under 37 C.F.R. §1.8(a):**

I hereby certify that this correspondence is being deposited on January 24, 2006 with the United States Postal Service as first-class mail in an envelope properly addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

  
\_\_\_\_\_  
Janice M. Nightlinger

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Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION TO CHARGE OMITTED FEE  
TO DEPOSIT ACCOUNT**

Applicants, by their undersigned attorneys, hereby petition the Commissioner to charge to Deposit Account No. 04-1406 a petition fee that was inadvertently omitted from their reply to the December 9, 2002 Notice To Comply With Requirements For...Sequence Disclosures (hereinafter "the Notice To Comply") in the above-identified patent application. A copy of the Notice

To Comply is attached hereto as Exhibit A. The facts and circumstances on which the present petition is based are set forth hereinbelow.

After filing a timely response to Notice To File Missing Parts Of Nonprovisional Application, dated March 15, 2002, which response included sequence information, the aforementioned Notice To Comply was issued December 9, 2002, because the computer-readable form was found to be damaged and/or unreadable. The Notice To Comply set a two-month response period, so that the initial response deadline was March 10, 2003, as March 9, 2003 fell on Sunday.

In the aftermath of the anthrax scare of 2001-2002, the United States Patent and Trademark Office (PTO) adopted procedures to facilitate submission of sequence information including a sequence listing in electronic form. These procedures were set forth in a notification captioned Attachment to Notice To Comply With Requirements...Sequence Disclosures, a copy of which is attached hereto as Exhibit B.

One of the filing procedures adopted by the PTO, as indicated in Exhibit B, was mailing by Federal Express, United Parcel Service or other delivery service. Due to the extraordinary events that prompted adoption of these alternative filing procedures, the undersigned believed (mistakenly, as explained in a phone discussion with Special Programs Examiner William Dixon on or about January 11, 2006) that sequence information filed via delivery service would be accorded the date of deposit with the delivery service as the date of filing. In this case, Applicants' response to the Notice To Comply was deposited with Federal Express on March 10, 2003, with a certification to that effect, and included a petition for a one-month extension of the response period. According to the image file wrapper of the above-identified patent application accessible through the PTO's PAIR System, Applicants' response to the Notice To Comply was accorded a filing date of March 10, 2003. Furthermore, an Official Filing Receipt was issued in due

course.

The actual date of receipt by the PTO of Applicants' response to the Notice To Comply was March 11, 2003, as shown by the official date stamp on the postcard receipt, a copy of which is attached hereto as Exhibit C.

The petition for extension of time included with Applicants' response to the Notice To Comply, as well as the body of the response itself authorized that any deficiency or required fee be charged to Deposit Account No. 04-1406 of Dann Dorfman Herrell & Skillman. This authorization should be treated as a constructive petition for a further one-month extension of time for Applicants to have filed their response to the Notice To Comply, as provided in 37 C.F.R. §1.36(a)(3). Of course, the further month's extension of the response period should have been accompanied by an additional fee, which was the omitted fee in this case. The Commissioner is hereby authorized to charge the amount of the omitted fee to Deposit Account No. 04-1406 of Dann Dorfman Herrell & Skillman. It is believed that \$300.00 is the appropriate amount of the omitted fee, as of the March 10, 2003 filing date of Applicants' response to the Notice To Comply. A duplicate copy of this paper is enclosed to facilitate such charging.

The omission of the extension fee payment, as discussed above, only recently came to the attention of the undersigned, upon routine review of Applicants' file, resulting from discussions with Examiner Nashed concerning a proposed examiner's amendment. The omission of the petition fee payment was the result of a mistake made in good faith, and without any deceptive intent.

If any fee is required for consideration of the present petition and/or if any further extension fee is due, such fees are also authorized to be charged to Deposit Account No. 04-1406.

It is respectfully requested that the present petition  
be granted.

Respectfully submitted,

DANN, DORFMAN, HERRELL & SKILLMAN  
A Professional Corporation  
Attorneys for Applicant(s)

By Patrick J. Hagan  
Patrick J. Hagan  
PTO Registration No. 27,643

Telephone: (215) 563-4100  
Facsimile: (215) 563-4044  
Customer No. 000110



# EXHIBIT A

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Commissioner for Patents  
Washington, DC 20231  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/017,471	10/23/2001	Enriko Takano	0380-P02329US1

000110  
DANN DORFMAN HERRELL & SKILLMAN  
SUITE 720  
1601 MARKET STREET  
PHILADELPHIA, PA 19103-2307

CONFIRMATION NO. 5210

## FORMALITIES LETTER



Date Mailed: 12/09/2002

### NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES

*Filing Date Granted*

Applicant is given **TWO MONTHS FROM THE DATE OF THIS NOTICE** within which to file the items indicated below to avoid abandonment. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

- The computer readable form that has been filed with this application has been found to be damaged and/or unreadable as indicated on the attached CRF Diskette Problem Report. A substitute computer readable form must be submitted as required by 37 C.F.R. 1.825(d). Applicant must provide a substitute computer readable form (CRF) copy of the "Sequence Listing" and a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d). If applicant desires the sequence listing in the instant application to be identical with that of another application on file in the U.S. Patent and Trademark Office, such request in accordance with 37 CFR 1.821(e) may be submitted in lieu of a new CRF.

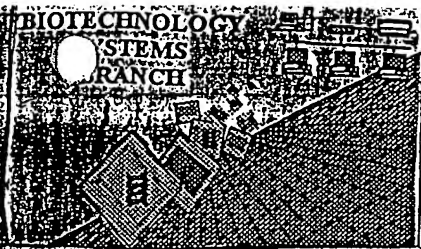
For questions regarding compliance to these requirements, please contact:

- For Rules Interpretation, call (703) 308-4216
- To Purchase PatentIn Software, call (703) 306-2600
- For PatentIn Software Program Help, call (703) 306-4119 or e-mail at [patin21help@uspto.gov](mailto:patin21help@uspto.gov) or [patin3help@uspto.gov](mailto:patin3help@uspto.gov).

*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center  
Initial Patent Examination Division (703) 308-1202

**PART 1 - ATTORNEY/APPLICANT COPY**



## CRF Problem Report

The Scientific and Technical Information Center (STIC) experienced a problem when processing the following computer readable form (CRF):

Application Serial Number: 10/017 471

Filing Date: 10/23/2001

Date Processed by STIC: 6/4/2002

STIC Contact: Mark Spencer, 703-308-4212

### Nature of Problem:

The CRF (was):

- ☒ (circle one) Damaged or Unreadable (for Unreadable, see attached)  
☐ Blank (no files on CRF) (see attached)  
☐ Empty file (filename present, but no bytes in file) (see attached)  
☐ Virus-infected. Virus name: \_\_\_\_\_ The STIC will not process the CRF.  
☐ Not saved in ASCII text  
☐ Sequence Listing was embedded in the file. According to Sequence Rules, submitted file should only be the Sequence Listing.  
☐ Did not contain a Sequence Listing. (see attached sample)  
☐ Other: \_\_\_\_\_

BEST AVAILABLE COPY

PLEASE USE THE CHECKER VERSION 3.1 PROGRAM TO REDUCE ERRORS.  
SEE BELOW FOR ADDRESS:

<http://www.uspto.gov/web/offices/pac/checker>

Applicants submitting genetic sequence information electronically on diskette or CD-Rom should be aware that there is a possibility that the disk/CD-Rom may have been affected by treatment given to all incoming mail.

Please consider using alternate methods of submission for the disk/CD-Rom or replacement disk/CD-Rom.

Any reply including a sequence listing in electronic form should NOT be sent to the 20231 zip code address for the United States Patent and Trademark Office, and instead should be sent via the following to the indicated addresses:

1. EFS-Bio (<<http://www.uspto.gov/ebc/efs/downloads/documents.htm>> , EFS Submission User Manual - ePAVE)
2. U.S. Postal Service: U.S. Patent and Trademark Office, Box Sequence, P.O. Box 2327, Arlington, VA 22202
3. Hand Carry directly to:  
U.S. Patent and Trademark Office, Technology Center 1600, Reception Area, 7<sup>th</sup> Floor, Examiner Name, Sequence Information, Crystal Mall One, 1911 South Clark Street, Arlington, VA 22202  
Or  
U.S. Patent and Trademark Office, Box Sequence, Customer Window, Lobby, Room 1B03, Crystal Plaza Two, 2011 South Clark Place, Arlington, VA 22202
4. Federal Express, United Parcel Service, or other delivery service to: U.S. Patent and Trademark Office, Box Sequence, Room 1B03-Mailroom, Crystal Plaza Two, 2011 South Clark Place, Arlington, VA 22202

Revised 01/29/2002



# EXHIBIT B

**UNITED STATES PATENT AND TRADEMARK OFFICE**

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
[www.uspto.gov](http://www.uspto.gov)

## ATTACHMENT TO "NOTICE TO COMPLY WITH REQUIREMENTS...SEQUENCE DISCLOSURES"

Any reply including a sequence listing in electronic form should NOT be sent to the 20231 zip code address for the United States Patent and Trademark Office, and instead should be submitted using one of the following methods:

1. Electronically submitted through EFS-Bio  
(<http://www.uspto.gov/ebs/efs/downloads/documents.htm>, EFS Submission User Manual - ePAVE)
2. Mailed to:  
U.S. Patent and Trademark Office  
Box Sequence, P.O. Box 2327  
Arlington, VA 22202
3. Mailed by Federal Express, United Parcel Service or other delivery service to:  
U. S. Patent and Trademark Office  
2011 South Clark Place  
Customer Window, Box Sequence  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, Virginia 22202
4. Hand Carried directly to the Customer Window at:  
2011 South Clark Place  
Crystal Plaza Two, Lobby, Room 1B03, Box Sequence,  
Arlington, Virginia 22202



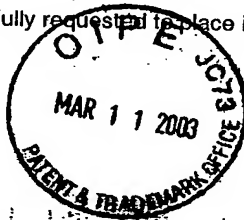


# **EXHIBIT C**

In re the Application of:	:	The following paper has been received:
Eriko Takano, et al.	:	
Application No.:10/017,471	:	Transmittal Sheet with Certificate of Mailing Via Federal Express in duplicate)
Docket: 0380-P02329US1	:	Re-Submission of Sequence Listing Under 37 C.F.R. §§1.821-1.825
	:	Computer Disk Containing Electronic Version of Sequence Listing
	:	Copy of Notice to Comply Nucleotide Sequence and/or Amino Acid Sequence Disclosures
For: ANTIBIOTIC PRODUCTION	:	Petition for 1-month Extension of Time
	:	Check for <u>\$110.00</u>

The Patent and Trademark Office is respectfully requested to place its STAMP and the POSTAL CARD and place it in the outgoing mail.

Mailed: March 10, 2003



By: Patrick J. Hagan, Esq.